

COMPLAINT 2006 – NO. 7

In Re Schmidt

STIPULATION AND ORDER

December, 2006

I. Nature of the Complaint

The Complaint alleges that Senator Dave Schmidt (Respondent) violated the Ethics in Public Service Act (Act) by placing or “posting” legislative press releases and legislative newsletters on his campaign web site. RCW 42.52.180 prohibits, among other things, a legislator from using or authorizing the use of the facilities of an agency to assist a campaign.

(1)...

Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

II. Jurisdiction

The Board has both personal and subject-matter jurisdiction.

III. Conclusion

The posting of these documents on the Respondent’s campaign web site is a violation of RCW 42.52.180.

IV. Determinations of Fact

The parties agree there are no material facts in dispute.

1. In 2006 the Respondent was a candidate for reelection to the Senate from the 44th Legislative District.
2. Respondent’s campaign web site, at the time the Complaint was filed, contained a number of legislative publications prepared in whole or in part with the use of the facilities of the both the House and the Senate. The documents were posted on the web site by the Respondent or at his direction.

3. The documents included legislative newsletters, legislative press releases, and legislative session updates. The documents were dated from 2000 to 2006.
4. Respondent removed these materials from his campaign web site when notified of this Complaint.
5. Respondent states that he tries to stay informed on the ethics law and on the published opinions of the Board but that he had overlooked or missed Advisory Opinion 2004 – No. 1. This opinion concluded that posting these documents on a campaign web site would violate RCW 42.52.180.
6. Advisory Opinion 2004 – No. 1 was noted in the 2005 Legislative Ethics Manual under the section “WHAT IS NEW.” The Board provided copies of this manual to the House and Senate for distribution to all legislators and legislative staff. The advisory opinion was published, and remains, on the Board’s web site.

V. Determinations of Law

A review of prior opinions on the use of discretionary legislative materials to assist a campaign through the use of these materials on web sites may be found in Complaint Opinion 2006 – No. 5.

These opinions conclude, among other things, that RCW 42.52.180 is violated when a legislator posts discretionary materials such as legislative newsletters and legislative press releases on his or her campaign web site because that use constitutes a use of the facilities of an agency (public resources) in support of a campaign.

VI. Summary and Order

It appearing from the facts, which are not in dispute, the Board’s investigation and conclusions of law, that Respondent did use the facilities of an agency to assist his campaign when he posted these materials on his campaign web site;

Now, Therefore

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent has violated RCW 42.52.180 and shall be penalized by a Letter of Instruction and this order shall serve as the Letter of Instruction.

Wayne Ehlers, Chair

Date:

I, Dave Schmidt, have had the option of reviewing this Stipulation and Order with legal counsel, or have actually reviewed it with legal counsel and understand its legal significance.

I acknowledge that I posted the legislative documents on my campaign web site. I respectfully disagree with the Board's legal conclusion that RCW 42.52.180 requires a determination that my actions were a violation of the Act. I view these documents as appropriate and legal when initially prepared and posting them anywhere seems to be a passive act involving the use of public documents. However, I acknowledge that it is the Board's responsibility to interpret and enforce the Act and that the Board has previously concluded that the Act prohibits this activity. I voluntarily sign this Stipulation and Order to effectuate a resolution of this matter.

Dave Schmidt

Date: